



**In re Estate of Sebastian Mbwiri Kieni (Deceased) (Civil Application 133 of 2023) [2024] KECA 1888 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1888 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION 133 OF 2023**

**JW LESSIT, JA**

**DECEMBER 5, 2024**

**IN THE MATTER OF THE ESTATE OF SEBASTIAN MBWIRI KIENI (DECEASED)**

**BETWEEN**

**CHRISTINE MUKLRI ..... 1<sup>ST</sup> APPLICANT  
JO ANINA KAIMURI MBWIRIA ..... 2<sup>ND</sup> APPLICANT  
JULIA MUGURE MBWIRIA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**MERCY GAKII ..... 1<sup>ST</sup> RESPONDENT  
ROSA WANJA ..... 2<sup>ND</sup> RESPONDENT  
MORREN GATWIRI ..... 3<sup>RD</sup> RESPONDENT**

*(Application for appointment of legal representatives of the estate of Lydia Karimi (deceased) and substitution of the deceased respondent in Nyeri Civil Appeal No. 133 of 2023)*

**RULING**

1. This application is dated 27<sup>th</sup> August 2024 and has been brought pursuant to rule 99 of the Court of Appeal Rules, section 3, 3a & 38 of the [Appellate Jurisdiction Act](#) and seeks:
2. That this Court be pleased to appoint the respondents herein Mercy Gakij, Rosa Wanja And Moreen Gatwiri as the legal representatives of the estate of Lydia Karimi (Deceased).
3. That upon issuance of prayer 2 above, this Honourable court be pleased to substitute the said Lydia Karimi (Deceased) with the appointed legal representatives as Respondents in this matter.
4. That the cost of this application be provided for.



5. That this Honourable Court be pleased to grant any other or better relief it deems fit and just in the circumstances to meet the ends of justice.
2. The background of the application is that Lydia Karimi was the respondent in both Nyeri Civil Application No. E018 of 2024 and Nyeri Civil Appeal No E133 of 2023. That on 22<sup>nd</sup> April 2023 when Nyeri Civil Application No. E018 of 2024 came up for directions, counsel for the respondent confirmed that his client, the respondent is deceased. That the court directed that the deceased respondent be substituted within 60 days, which action was not taken. That both the application and the appeal were filed by the applicants herein hence the respondents have nothing to lose in the event the appeal abates.  
  
That the respondents herein are the daughters of the deceased Lydia Karimi and that they are currently the registered proprietors as common tenants of the land the subject matter of both cases, being parcel no. Nkuene/L. Mikumbune/689.
3. That it is prudent that the respondents herein be appointed as legal representatives of their deceased mother and be substituted as respondents in Nyeri Civil Appeal No E133 of 2023. That unless the orders sought are granted, the applicants may suffer irreparably and the appeal and application filed and pending before court may be rendered nugatory and/or may abate to the detriment of the applicants herein.
4. The background of the application is that the respondent Lydia Karimi Nyeri Civil Appeal No E133 of 2023 died around April 2024. <sup>That on 22nd April 2023 when Nyeri Civil Application No. E018 of 2024 came up for directions,</sup> counsel for the respondent confirmed that his client, the respondent is deceased. That the court directed that the deceased respondent be substituted within 60 days, which action was not taken. That both the application and the appeal were filed by the applicants herein hence the respondents have nothing to lose in the event the appeal abates. That the respondents herein are the daughters of the deceased Lydia Karimi and that they are currently the registered proprietors of land parcel No. NKUENE/L. MIKUMBUNE/689 as common tenants.
5. That it is prudent that the respondents herein be appointed as legal representatives of their deceased mother and be substituted as respondents in Nyeri Civil Appeal No E133 of 2023. That unless the orders sought are granted, the applicants may suffer irreparably and the appeal and application filed and pending before court may be rendered nugatory and/or may abate to the detriment of the applicants herein.
6. MWIRIGI KABURU, advocate has by a replying affidavit dated and filed on 11<sup>th</sup> September, 2024, opposed this application. He confirms that he is the advocate on record for the deceased respondent in the named cases and confirms that he informed the Court of the demise of his client, attaching the death certificate as proof. He deposes that on 23<sup>rd</sup> May, 2024, he filed an application under certificate of urgency, for Limited grant ad litem in MERU HIGH COURT being Misc. Succ. Appl. No. E005 of 2024. He has annexed exhibit MK2a & b copies of the receipt and application filed in court on 23<sup>rd</sup> May, 2024. He deposes that on 24<sup>th</sup> May, 2024 the Judge on duty did not certify the matter urgent and it was directed that a date for the application be taken at the registry. The Petition for Letters of Administration ad litem is annexed and shows that the person petitioning for grant of letters of administration is MOREEN GATWIRI SABASTIAN. Counsel deposes that the instant application is incompetent as the proposed substitutes are not the legal representatives of the deceased respondent, and further that action has been taken and that the process to replace the deceased respondent through an application in the Succession Court is on course. In his submissions, counsel relies on the case of Trouistik Union International & Anor. v. Jane Mbeyu & Anor. [1993] KLR 230.



7. It has long been held as the correct position since the Court of Appeal decision in Trouistik Union International & Anor. v. Jane Mbeyu & Anor. Civil Appeal No. 145 of 1990 [1993] KLR 230, that the Legal Representative of the deceased is the person appointed as such by a Succession Court in accordance of the Law of Succession Act.
8. The applicants' counsel has filed written submissions. I have considered the same. Counsel decries that fact that the respondent's counsel did not inform his of the steps taken to have the deceased respondent replaced, and that his clients were full of anxiety thinking nothing was being done. He insists that the application having been made under rule 99 of this Court's Rules was proper.
9. I have considered the application, the affidavits sworn for and against the same and the submissions of both counsel. I note that the basis for this application was the lack of action to have the deceased respondent replaced in the pending matters. It transpires that by the time this application was filed, (27<sup>th</sup> August 2024), the counsel for the deceased respondent, acting for the person petitioning for letters of administration ad litem had four months earlier petitioned for appointment of Moreen Gatwiri Sebastian as the administrator of the deceased estate.
10. I note that several files have been listed in the Petition for letters of administration ad litem. The applicants advocate has raised no issues about that in his submissions, whether or not it suffices for the purposes of the pending matters where the applicants have interest, therefore, I will presume that there were no issues in that regard.
11. In the circumstances, I do find that the instant application was made on the wrong premises that nothing was being done to replace the deceased respondent while in fact the process had begun through the deceased family. This application is therefore superfluous and is struck out with no order as to costs.

**DATED AND DELIVERED AT NYERI THIS 5<sup>TH</sup> DAY OF DECEMBER, 2024.**

**J. LESIIT**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

